

1988

Frank Moyle Creer and John Preston Creer v. Valley Bank and Trust Company : Brief of Appellee

Utah Supreme Court

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**UTAH SUPREME COURT
BRIEF**

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IN THE SUPREME COURT OF THE STATE OF UTAH

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| FRANK MOYLE CREER and JOHN PRESTON CREER | : | |
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| Plaintiffs/Respondents | : | BRIEF OF RESPONDENTS JOHN PRESTON CREER AND FRANK MOYLE CREER |
| vs. | : | |
| | : | |
| VALLEY BANK AND TRUST COMPANY, a Utah Corporation, VALLEY CENTRAL BANK, a Utah Corpora- tion, MARCUS TAYLOR, receiver, | : | |
| | : | Docket No. 88-0179 Priority No. 14B |
| Defendants/Appellants. | : | |

APPEAL FROM THE JUDGMENT OF THE
SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY
THE HONORABLE DON V. TIBBS, DISTRICT COURT JUDGE

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IN THE SUPREME COURT OF THE STATE OF UTAH

FRANK MOYLE CREER and JOHN
PRESTON CREER

Plaintiffs/Respondents

vs.

VALLEY BANK AND TRUST COMPANY,
a Utah Corporation, VALLEY
CENTRAL BANK, a Utah Corpora-
tion, MARCUS TAYLOR, receiver,

Defendants/Appellants.

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AND FRANK MOYLE CREER

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JURISDICTION

The Utah Supreme Court has jurisdiction over this appeal pursuant to Article 8, Section 3, of the Utah Constitution, and Utah Code Annotated, 78-2-2 (1953 as amended) and Rule 3A, Rules of the Utah Supreme Court.

NATURE OF PROCEEDINGS

This is an appeal from a final judgment dated April 6, 1988, and entered April 11, 1988, by the Honorable Don V. Tibbs, Sixth Judicial District Court of Sevier County, State of Utah.

STATEMENT OF THE ISSUES PRESENTED FOR APPEAL

The District Court properly ruled that the Utah Motor Vehicle Act is the exclusive means for recording a lien on a motor vehicle in the State of Utah and that an unperfected security interest filed under the Utah Uniform Commercial Code is without effect as to a clear title on a licensed motorized vehicle.

STATEMENT OF THE CASE

1. Nature of the Case. Plaintiffs instituted this action against defendants for a determination that plaintiffs' claim to a 1978 International cement mixer, ten yard, Cummins 230 (the "cement mixer"), prevails over defendants' interests in the cement mixer.

2. Course of Proceedings. On October 27, 1987, plaintiffs filed a Verified Complaint for Declaratory Relief in the Sixth Judicial District Court in and for Sevier County, State of Utah, civil number 10140, requesting a determination that plaintiffs own and that defendants have no interest in the cement mixer. (R.1) Valley Bank and Trust company and Valley Central Bank (collectively referred to as "Valley") filed an Answer and Counterclaim. The Counterclaim sought attorney's fees. Plaintiffs replied to Valley's Counterclaim (R.54) and the parties began discovery proceedings.

On March 3, 1988, Valley filed a Motion for Summary Judgment which was followed by a Cross-Motion for Summary Judgment filed by plaintiffs on March 9, 1988. (R.163, 177) After hearing both parties' Motions for Summary Judgment, the Honorable Don V. Tibbs granted plaintiffs' motion and denied Valley's motion. (R.197) On April 6, 1988, the court entered Findings of Fact and Conclusions of Law, concluding that F. Creer

has title to, and Valley has no interest in, the cement mixer. (R.203; Addendum No. 1) Judgment against Valley was entered by the court on April 6, 1988 (R.208) and on May 1, 1988, Valley filed a Notice of Appeal to the Utah Supreme Court. (R.212) Both parties subsequently moved for summary disposition of the case, which motions were denied by the court and the appeal was reserved for plenary review.

3. Statement of Facts. On April 22, 1982, Lays Rock Products, Inc. ("Lays"), executed and delivered to Valley a promissory note ("Note") in the principal sum of \$250,000. (R.204) As security for the Note, Lays executed and delivered to Valley a security agreement granting Valley a security interest in certain personal property, including the cement mixer, which is the subject of this action. (R.204) Lays was the owner and had possession of the cement mixer at the time the security agreement was executed. (R.8) Valley never perfected their security interest. (R.167,204) Lays was later merged into L.A. Young Sons Construction Company ("L.A. Young"). (R. 167,204).

Between approximately June, 1986, and March, 1987, Plaintiff, John Preston Creer ("J.P. Creer") performed legal services for L. A. Young. (R.204) L. A. Young, however, failed to compensate J. P. Creer, for his legal services and in March, 1987, J.P. Creer informed L. A. Young that he would not continue legal representation unless L. A. Young paid J. P. Creer's legal

bill. (R.205) As a result, L. A. Young, through its president, Alan G. Young, executed and delivered to J. P. Creer a certificate of title to the cement mixer. (R.205) J.P. Creer later transferred title to the cement mixer to his son, plaintiff, Frank Creer ("F. Creer"). (R.205) J. P. Creer had no notice of the filing by Valley Bank prior to receiving the title to the motor vehicle. (R.205)

At the time he received title to the cement mixer, J.P. Creer intended and understood that it was being transferred in partial satisfaction of L.A. Young's debt to J.P. Creer for previously rendered legal services and that it was not intended as security for that debt. (R.205) F. Creer obtained possession of the cement mixer but thereafter relinquished possession after being told by Alan Young that there might be violence upon his person. (R. 181-182, 190-191) The cement mixer remained in the possession of L. A. Young until Marcus Taylor, as receiver, took possession of it. (R.181,191) Neither J.P. Creer nor F. Creer asserts a security interest in the cement mixer, but rather base their claim to the cement mixer on an ownership interest evidenced by a clear certificate of title from the Department of Motor Vehicles. (R.205)

SUMMARY OF ARGUMENTS

The recording provisions of the Utah Motor Vehicle Act are the sole and exclusive means by which one can encumber a

title to a licensed motor vehicle in the State of Utah.

ARGUMENT NO. 1

THE UTAH MOTOR VEHICLE ACT IS THE EXCLUSIVE REMEDY FOR
OBTAINING AND PERFECTING A SECURITY INTEREST IN THE
STATE OF UTAH ON A REGISTERED MOTOR VEHICLE

Plaintiff/Respondent relies upon Draper Bank & Trust Company v. Ed Lawson, 675 P.2d 1174 (Utah 1983). It should be pointed out that this case has nothing to do with motor vehicles in a dealers' inventory. In the Draper Bank & Trust case:

The general rule governing liens on motor vehicles not in a dealer's inventory is that perfection of a lien is governed exclusively by the filing and title provisions of the Motor Vehicle Act, U.C.A., 1953, §§41-1-81 and 41-1-86.

Under these provisions the perfection of a lien on an automobile depends upon the appearance of the lien interest on the vehicle's certificate of title. The filing of a financing statement pursuant to Article 9 is not effective to protect a lien interest in an automobile sold to a consumer. §41-1-80(2) and §70A-9-302(3)(b)... Thus, these provisions treat the perfection of a security interest for the financing of automobiles held in a dealer's inventory for resale differently from a security interest in an automobile for some other reason. Other jurisdictions have uniformly interpreted §9-302(3)(b) in the same way, as has one well-known U.C.C. commentator. (Pg. 1177)

The court then goes on, in a footnote, to cite many other states who have sustained the motor vehicle title laws as the exclusive means of perfecting title in a motor vehicle.

In Manufacturers Credit Corporation v. Peoples Trust of New Jersey, 441 F.2d 1313 (CA Third Circuit) held specifically that:

We have held that where the Certificate of Ownership Law of New Jersey is applicable to the filing of a security interest in a motor vehicle, its provisions, and not those of the New Jersey Uniform Commercial Code, govern the proper method of filing. (Citations omitted)

This same provision was held IN RE Vinarsky, 287 F.Supp. 446, wherein a New York court ruled:

A security instrument filed through the provisions of the Uniform Commercial Code were null and void because they failed to file a lien with the Motor Vehicle Code.

Practically speaking, there would be chaos in transference of titles of motor vehicles if an unperfected security interest was not recorded of record under the Utah Motor Vehicle Act in the Utah Motor Vehicle Department. Under Valley Bank's theory, everyone would have to check with the Department of Business Regulation to see if someone had an unperfected security interest filed against their automobile as they went to seek title from the Utah Motor Vehicle Department.

Motor vehicles are governed exclusively by the filing and title provisions of the Utah Motor Vehicle Act, U.C.A. 1953, as amended, Sections 41-1-81, 41-1-86.

Section 41-1-83 of U.C.A. 1953, states as follows:

- (1) Upon receipt of a title application the department shall file it, and when satisfied as to the authenticity of the application, shall issue a new certificate of title in usual form, giving the name of the owner and a statement of all liens and encumbrances certified to the department as existing under the vehicle.

If a lien or encumbrance was not certified to the Department, as it was not in this case, the Department of Motor Vehicles would have no way of knowing if there was a lien or encumbrance and would therefore clear the title and issue a new certificate.

Further, Section 41-1-85, U.C.A. (1953 as amended) states as follows:

The filing and issuance of a new certificate of title under 41-1-82 and 41-1-83 constitute constructive notice of all liens and encumbrances against the vehicle to creditors of the owner, or subsequent purchasers and encumbrancers.

Note constructive notice of all liens and encumbrances.

A lien or encumbrance recorded elsewhere would not be constructive notice to a creditor or subsequent purchaser.

Further 41-1-87, U.C.A. (1953 as amended) states:

This method provided in Section 41-1-82 through 41-1-86 of giving constructive notice of a lien or encumbrance upon a registered vehicle is exclusive.

Exclusive is exclusive.

Anderson's Uniform Commercial Code, 9-302:19 under Motor Vehicles, states as follows:

In many states, local variations of the Code expressly declare that the perfection of a security interest in a motor vehicle shall be governed by a motor vehicle title registration statute, with the consequence that the Code is not applicable thereto. The Uniform Commercial Code gives each state the option of providing a non-Code system of perfection for security interests in motor vehicles by providing for central filing and certificate notation. The translation of the perfecting of security interests in motor vehicles to a title certificate statute effects not only a change in the place of filing but also a change as to what is filed: under the Code, the filing is of a financing statement, or a security agreement in lieu of a financing statement, whereas under the title certificate statute the paper which is filed is an application for a title certificate to the collateral vehicle in which application it is recited that the vehicle is subject to a lien or security interest in favor of the secured party.

When the perfection of a security interest in a motor vehicle is governed by non-Code law, the creditor must comply with that law or his interest is not perfected, even though the creditor files a financing statement which would be sufficient under the Code if other collateral were involved. Code §9-302(2) declares unambiguously that a security interest in property covered by a statute which provides for central filing of, or which requires indication of a security interest on a certificate of title, may be perfected only by registration or filing under such statute or by indication of the security interest on a certificate of title or a duplicate thereof issued under such statute.

The rationale for the exemption of motor vehicles from the general pattern of Article 9 is the recognition of the wide-spread existence of local statutes governing the subject.

Further, the Utah Uniform Commercial Code , 70A-9-302(3) states as follows:

The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to and

(b) those statutes of this state which provide for the indication of security interest on certificate.

We have already reviewed the other statutes of the State (the Motor Vehicle Act) which provide for "the indication of security interest on the certificate". This section says that the filing of a financing statement is not effective to perfect a security interest.

There is no provision, under the Utah Motor Vehicle Act, for unperfected security interests. The lien or encumbrance is either recorded on the certificate of title or it is not. If it is not it has no legal affect on obtaining a clear motor vehicle title.

There is no issue in this case as to competing interest of record on the motor vehicle title as to which has priority over the other. Valley Bank did not record anything of record with the Department of Motor Vehicles.

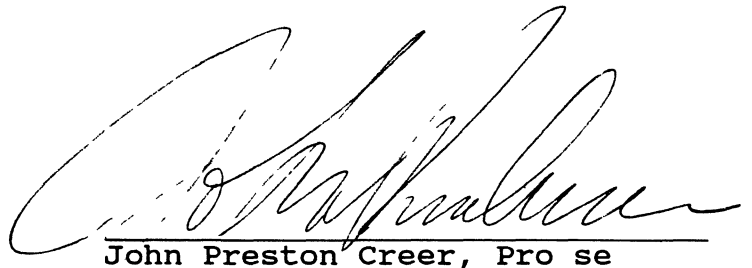
SUMMARY

The various requirements of the Uniform Commercial Code are not part of the Utah Motor Vehicle Act. Plaintiffs/ Respondents had no notice of the U.C.C. filing. They had possession of the truck but relinquished it under threat of

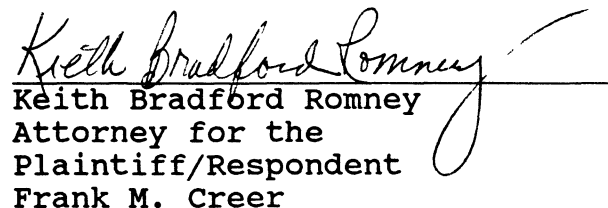
violence. They received the truck in payment of a debt. The title actually issued listed no liens or encumbrances.

The plaintiffs/respondents urge the court to reaffirm the Draper Bank (supra) case, that the Utah Motor Vehicle Act is the exclusive means for recording liens or encumbrances on motor vehicles in the State of Utah and that its provisions and not those of the Utah Uniform Commercial Code govern the proper method of filing. Lastly, that an unperfected security interest filed under the Uniform Commercial Code does not in any way cloud or supersede the title if it is not properly recorded under the Utah Motor Vehicles Act.

Respectfully submitted this 9th day of September, 1988.



John Preston Creer, Pro se



Keith Bradford Romney
Attorney for the
Plaintiff/Respondent
Frank M. Creer

CERTIFICATE OF SERVICE

I hereby certify that two copies of the above BRIEF OF
RESPONDENTS JOHN PRESTON CREER AND FRANK MOYLE CREER were hand-
delivered on the 9th day of September, 1988, to:

Gary E. Doctorman, Esq.
John T. Anderson, Esq.
BIELE, HASLAM & HATCH
50 West Broadway, #400
Salt Lake City, Utah 84101

A handwritten signature in cursive script, reading "Betty J. Hargler", written over a horizontal line.